

Serial No. 10/817,058

Response

APPENDIX

Declaration under 37 CFR 1.131 by John E. Baker, Ph.D.

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PATENT

Attorney Docket No. BA-32448(1)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : BAKER et al.
Serial No. : 10/817,058
Filing Date : April 2, 2004
For : Method of Treating Cardiac Ischemia by Using Erythropoietin
Group Art Unit: 1653
Examiner : MAYER, Suzanne Marie
Confirmation No.: 2664

DECLARATION UNDER 37 C.F.R. §1.131

Sir:

I, John E. Baker, Ph.D., inventor and applicant in the above-identified patent application, declare and say as follows:

1. That on a date prior to July 10, 2002, I was involved in the conception of a method of increasing resistance of the heart to ischemia, as evidenced by attached **Exhibit A**. **Exhibit A** is a copy of my research proposal entitled "Erythropoietin, Nitric Oxide Synthase and Resistance to Myocardial Ischemia".
2. That following the conception, and on a date prior to July 10, 2002, a study of formulations of erythropoietin (EPO) was conducted under the direction and supervision of myself and Yang Shi, Ph.D., as evidenced by the attached **Exhibit B**. **Exhibit B** is a copy of the Discovery Record and Report with an attached brief description of the discovery, as discussed further in paragraph 3 below. In the study(ies), hearts isolated from rabbits were perfused with a range of concentrations of EPO prior to a global ischemic insult followed by reperfusion. The results of the study(ies) showed cardioprotection by the administration of EPO.

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3. That on a date prior to July 10, 2002, John E. Baker and Yang Shi, wrote and had witnessed a Discovery Record and Report to MCW Research Foundation entitled "Cardioprotection by Erythropoietin" as evidenced by the attached Exhibit B. Exhibit B is a copy of the Discovery Record and Report with an attached brief description of the discovery.
4. That on April 4, 2003, the provisional application S/N 60/460,684 to the above-identified patent application, entitled "Method of Treating Cardiac Ischemia by Using Erythropoietin," was filed in the U.S. Patent and Trademark Office.
5. I further hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Date: March 3, 2005 By: John E. Baker
John E. Baker, Ph.D.